

**Standard Agreement between Consultant and Subconsultant  
For Professional Services on  
Pennsylvania Department of Transportation Agreements**

This Subconsultant Agreement becomes effective on the date the Legal Agreement identified below between the Pennsylvania Department of Transportation (“PennDOT”) and the Consultant is executed in ECMS. In the event that the Legal Agreement is not executed, this Subconsultant Agreement will become null and void.

Consultant:

Attn:

Subconsultant:

Attn:

Client:

Commonwealth of Pennsylvania (“Commonwealth”), acting through its Department of Transportation

Legal Agreement:

PennDOT Agreement No. \_\_\_\_\_, incorporated herein by reference

Subconsultant Services:

Subconsultant will provide professional services as directed by the Consultant and Client in accordance with the Legal Agreement, including all future work orders, amendments and/or supplements in accordance with the technical proposal as presented on PennDOT’s Engineering and Construction Management System (“ECMS”).

Subconsultant Fee:

Subconsultant will be compensated for its services in accordance with the Legal Agreement, including all future work orders, amendments and/or supplements, and in accordance with Subconsultant’s price proposal as presented on ECMS.

Approved and accepted by both parties in accordance with the General Terms of the Agreement for Professional Services, as attached:

CONSULTANT\*\*

SUBCONSULTANT\*\*

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\*\* Signature lines to be modified to match ECMS workflow format

**General Terms of Agreement between Consultant and Subconsultant  
For Professional Services On  
Pennsylvania Department of Transportation Agreements**

- 1. General Responsibility and Standard of Care:** The Subconsultant agrees that it shall act as an independent contractor, and shall provide its services under this Agreement in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the Commonwealth of Pennsylvania.
- 2. Jurisdiction:** This contract shall be governed by the laws of the Commonwealth of Pennsylvania.
- 3. Terms and Conditions:** The Subconsultant agrees to assume obligations, liabilities, and duties to the Client and the Consultant in the same manner and to the same extent as those assumed by the Consultant to the Client as set forth in the Legal Agreement (incorporated herein by reference) and to be bound by and comply with the same terms and conditions.
- 4. Instruments of Service:** All drawings, specifications, reports, information, or data prepared by or furnished to either the Consultant or Subconsultant under this Agreement shall be the property of the Pennsylvania Department of Transportation as specified in the Legal Agreement and Publication 442 - Specifications for Consultant Agreements for Project Development Services.
- 5. Subconsultant's Property:** Products, technologies or methods developed independently by the Subconsultant and used in the performance of this and/or other Agreements shall remain the property of the Subconsultant.
- 6. Amendments:** This Agreement, specifically services to be performed by and compensation to be paid to the Subconsultant, may be amended by a work order or supplement to the Legal Agreement properly executed in ECMS. Any such amendment will be considered "executed" and therefore effective for purposes of this Agreement *upon the date of written notification* to Subconsultant by the Consultant that the supplement or work order was executed in ECMS.
- 7. Invoicing and Payment:** In sequence with the Consultant's monthly invoicing schedule, the Subconsultant shall prepare and submit a detailed invoice in accordance with the Legal Agreement for payment for services rendered and expenses incurred in the preceding month, including all necessary supporting documentation. The Consultant shall promptly submit said invoice to the Client for payment with its own monthly invoice to the Client. Within fourteen (14) calendar days of receipt of payment by the Consultant for the Subconsultant's invoice, the Consultant shall pay to the Subconsultant the amount invoiced, less any portion not approved by the Client. The Subconsultant acknowledges that the Consultant is under no obligation to pay Subconsultant for its services and expenses incurred as invoiced until the Consultant has received payment from the Client for those services and expenses. Furthermore, the Subconsultant acknowledges that all payment for its services and expenses must come from the Consultant and that the Client has neither the authority nor the obligation to pay the Subconsultant directly, because of the absence of privity of contract between the Client and the Subconsultant.
- 8. Suspension of Work:** If the Consultant fails to pay the Subconsultant within 30 days of receiving payment from the Client or fails to submit the Subconsultant's invoice to the Client within 60

days of submission in ECMS, the Subconsultant may, at its option, suspend work on this Agreement until due payment has been made in full.

- 9. Termination Rights:** The Client may terminate the Legal Agreement for any reason. This includes a situation attributable to the alleged acts or omissions of the Consultant or Subconsultant. In such an event, this Agreement with the Subconsultant shall be terminated as to all services that have not been performed by the Subconsultant. The Consultant will pay Subconsultant for services completed satisfactorily and all reimbursable expenditures justifiably incurred for the services up until the date of termination, and for the corresponding payments traceable to those services to the extent of the funds actually received by Consultant from the Client for the Subconsultant's services.

In addition, upon seven (7) days' notice, the Consultant shall have the option to terminate this Subconsultant Agreement for the following causes:

- a. The Subconsultant has subcontracted, assigned, yielded or shared any part of the services described under the Contract without the authorization of Consultant.
- b. The Subconsultant fails to provide or is late in providing certificates of insurance after a demand in writing for the same, or if the Consultant receives notice of the cancellation of any insurance coverage required by the Subconsultant hereunder.
- c. There are errors, omissions, faults or delays in the execution of the services or unsatisfactory performance by the Subconsultant.
- d. The Subconsultant ceases doing business, commits an act of bankruptcy, or makes an assignment for the benefit of creditors or takes benefit of any insolvency act, or if a receiver or trustee shall be appointed for it or, more generally, in any case where the financial or technical position of the Subconsultant is modified in such a way as in the Consultant's judgment impairs its financial responsibility or its ability to perform the nature or scope of the work entrusted to it hereunder.
- e. The Client requests termination.

In the event termination by the Consultant is due to action or fault of the Subconsultant, and, providing such fault is not cured within ten (10) days written notice from the Consultant, the Consultant shall have all rights to recover any and all damages and expenses due to the action or fault of the Subconsultant; any damage of any kind to the services performed due to said action or fault; additional reasonable costs to perform or re-perform the Subconsultant's services; and any penalties, damages, or interest which are incurred by the Consultant as a result of said action or fault in addition to all remedies and damages in the Prime Agreement and all rights at law and in equity. The damages and expenses set forth above may be deducted from any amounts due to the Subconsultant, and the Subconsultant shall promptly pay any deficiencies.

Furthermore, upon seven days' notice, the Subconsultant shall have the option to terminate this Subconsultant Agreement for the following cause:

If Consultant ceases doing business, commits an act of bankruptcy, or makes an assignment for the benefit of creditors or takes benefit of any insolvency act, or if a receiver or trustee shall be appointed for it or, more generally, in any case where the financial or technical position of Consultant is modified in such a way as in the Subconsultant's judgment impairs its financial responsibility or its ability to lead the nature or scope of the work entrusted to it hereunder.

In the event termination is due to action or fault of the Consultant, and, providing such fault is not cured within ten (10) days written notice from the Subconsultant, the Subconsultant shall have all rights to recover any and all damages and expenses due to the action or fault of the Consultant; any damage of any kind to the services performed due to said action or fault; and any penalties, damages, or interest which are incurred by the Subconsultant as a result of said action or fault in addition to all remedies and damages in the Prime Agreement and all rights at law and in equity.

The Consultant will pay the Subconsultant for services completed satisfactorily and all reimbursable expenditures justifiably incurred for the services up until the date of termination, and for the corresponding payments traceable to those services to the extent of the funds actually received by the Consultant from the Client for Subconsultant's services.

**10. Dispute Resolution:** Should conflicts between the parties arise out of or relating to this Agreement, both parties agree that every effort will be made to negotiate a resolution, independently and in good faith, by authorized representatives of each party.

Should any disputes remain unresolved through informal negotiation, both parties agree that said disputes shall be submitted to nonbinding mediation. A written request for mediation may be made by either party. The receiving party shall respond within ten (10) days, and the initial mediation session shall be held within thirty (30) days of the initial notice. The parties shall share equally the costs and expenses of the mediation, except that each party shall bear the cost of its own legal representation.

Should a dispute or claim arising from this Subconsultant Agreement or the Legal Agreement involve in any way the Client or its actions, the Consultant agrees that either it will present the Subconsultant's claim or dispute to the Client, or it will authorize the Subconsultant to present the same to the Client. In no case will the Consultant obstruct any avenue of resolution of a claim or dispute by preventing the Subconsultant's access to the Client.

**11. Indemnification:** The Subconsultant and the Consultant agree that, to the fullest extent permitted by law, each party shall indemnify and save harmless the Client, the other party, their respective shareholders, officers, directors, and employees against all damages, liabilities, and costs, including reasonable attorneys' fees and defense costs, to the extent caused by each party's own negligent performance of professional services under this Agreement or the Legal Agreement, as applicable, and the acts of anyone for whom the party is legally liable. Neither the Subconsultant nor the Consultant shall be obligated to indemnify the other party for the other party's negligence or for the negligence of others connected with this Agreement.

**12. Insurance:**

- a. The Consultant together with any other entities required by the Legal Agreement shall be added as additional insureds, under the Subconsultant's Comprehensive General Liability Policy and Commercial Auto policy, including Completed Operations Insurance, to insure them.
- b. Coverage shall be primary, with the Consultant's and others', as noted above, insurance to be non-contributory and excess over the Subconsultant's coverage.
- c. All policies shall be endorsed to waive the Subconsultant's rights of subrogation against Consultant and the Client.
- d. Prior to beginning work, insurance certificates that comply with the requirements shall

be furnished to the Consultant's Project Manager.

- e. Not less than thirty (30) days' written notice to the Consultant is required of any cancellation or reduction of limits in the policy.
- f. The Subconsultant shall not perform any work until all insurances are in place. One week prior to start of said work, the Subconsultant shall submit a Certificate of Insurance showing the Consultant and the Client as additional insureds, identifying the project number on the certificate of insurance with the following minimum requirements identified below (unless waived or amended in writing).
  - i. Commercial General Liability (including Contractual Liability) - \$250,000 per person and \$1,000,000 per occurrence for both bodily injury/death and property damage
  - ii. Combined Single Limit Commercial Automobile Liability - \$1,000,000 Combined Single Limit
  - iii. Workmen's Compensation and Employers' Liability Coverage – Statutory Limits
  - iv. Professional Liability/Errors and Omissions Coverage - \$1,000,000 Minimum

**13. Third Party Beneficiaries:** Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the Subconsultant, the Consultant, or the Client.

**14. Entirety:** This Agreement is the entire Agreement between Subconsultant and the Consultant. It supersedes all prior communications, negotiations, understandings, and agreements, whether written or oral, and may not be modified except as provided in Item 6 above.

**15. Severability:** If any provision of this Agreement is determined by a court of law to be invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect and are binding on both parties to the agreement.